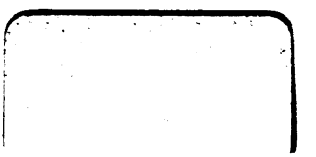

THE LAW

OF

Passenger and Freight

ELEVATORS.

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PREFACE.

With the intention of writing a magazine article on the subject of passenger and freight elevators, I began examining the authorities; but soon discovered that within the last half dozen years the cases had so increased in number and importance as to permit a brief treatise on this new subject. Accordingly, I have collected what I believe to be all the cases to date, digested them and classified the legal points as well as I was able to. It will be observed that the immaturity of the subject compelled me to occasionally write independent of direct decisions; but where I have done so I believe that I have followed established principles and correctly stated the law. To make this little book exhaustive I have dealt in details; to render it acceptable as authority in the courts I have freely quoted the opinions of the highest State courts.

J. A. W.

Rialto Building, St. Louis, Mo.
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OUTLINE OF CONTENTS.

CHAPTER I.

ELEVATORS AS CARRIERS.

CHAPTER II.

CONSTRUCTION.

CHAPTER III.

OPERATION.

CHAPTER IV.

INJURIES TO TRESPASSERS AND LICENSEES.

CHAPTER V.

DAMAGES.

CHAPTER I.

CHAPTER II.

CHAPTER III.

CHAPTER IV.

CHAPTER V.

TABLE OF CITATIONS.

[References are to pages.]

[References are to pages.]

[References are to pages.]

[References are to pages.]

[References are to pages.]

[References are to pages.]

THE LAW

OF

Passenger and Freight Elevators.

CHAPTER I.

ELEVATORS AS CARRIERS.

§ 1. **Definition.** — The elevator is a mechanical contrivance for vertically carrying persons or freight. It usually consists of a car or cage suspended by movable cables in

an inclosed shaft or well up and down which the car may be moved by the force of electricity, steam, compressed air, or other mechanical agency, under the control of a motorman within the car. Freight elevators are sometimes referred to as "hoists" and in England all elevators are called "lifts."

§ 2. **Right to erect.**— It is curious that the right to erect and use so valuable and convenient an invention as an elevator should have been challenged in the courts; but this was done by counsel in a recent Wisconsin case. It was here claimed that the placing of a passenger elevator in a building was a breach of the duty, imposed by the common law, to avoid acts the natural and probable consequence of which would be dangerous to the lives and persons of others. The court very properly refused to sustain this contention, holding that "Elevators such as this are in such universal use that we cannot say that one placed in position and in use is *per se* a machine, device or appliance imminently

dangerous to the lives of others, or that serious injury to any person using, operating, or approaching, or being near one would be a natural or probable consequence of such use." (Ziemann v. Kieckhefer Elevator Mfg. Co., 90 Wis. 497; 63 N. W. Rep. 1021. See Donnelly v. Jenkins, 58 How. Pr. 254.)

§ 3. **As carriers.** — Elevators are carriers, and as such they may carry for the public in general, in which event they are common carriers; or they may carry only for the owner or a select few, in which case they are private carriers. Again, elevators may be operated for a consideration or gratuitously, for the carrying of both freight and passengers or for the exclusive carriage of either. The owners of public elevators have the right to adopt and observe reasonable rules for their regulation; thus, frequently in very tall buildings elevator cars known as "through cars" are run according to schedules permitting them to stop only at a limited number of specified floors. This is a reasonable rule

and no passenger can insist that it be either violated or abolished.

In all these, and in many other, respects the duties, rights and liabilities of the owners of elevators are the same as those of other carriers. There is no distinction in law between carrying horizontally and carrying vertically. However, although there are no cases upon the point, it seems that reason favors the exacting of greater caution on the part of those who carry vertically, since they incur the great danger of opposing the inexorable law of gravitation.

While the cases concerning elevators have not been sufficiently numerous or varied in their character to raise for judicial determination all the points of comparison between elevators and other carriers, they have been uniform in concluding that the general principles governing all are the same and their application similar.

§ 4. **Passenger elevators.**— It is well settled that carriers of passengers by elevator

are subject to the same rules of law as are other carriers of passengers. The purpose in each case is the mechanical transportation of the person of the passenger; the relations of the carrier and the passenger are similar; and the same reasons exist for requiring of the carrier the utmost human care for the personal safety of the passenger (Goodsell v. Taylor, 41 Minn. 207; 42 N. W. Rep. 873; Hutchinson on Carriers (2d ed.), § 81 d.; Lawson on Bailments, § 329).

§ 5. **Passenger elevators — Treadwell v. Whittier.**— The leading case on this subject is that of Treadwell v. Whittier (80 Cal. 595; 5 L. R. A. 498), in which the learned court expounds the specific reasons upon which the decision is based as follows: "The defendants used their elevator in lifting persons vertically to the height of forty feet. That they were carriers of passengers and should be treated as such, we have no doubt. The same responsibility as to care and diligence rested on them as on the carriers of passen-

gers by stage-coach or railway. * * * Persons who are lifted by elevators are subjected to great risks of life and limb. They are hoisted vertically, and are unable, in the case of the breaking of the machinery, to help themselves. The person running such elevator must be held to undertake to raise such persons safely, so far as human care and foresight will go."

§ 6. **Passenger elevators — Degree of care.** There is no employment where the law demands a higher degree of care and diligence than in the construction and operation of passenger elevators. Their operation is necessarily to some extent dangerous. The control of the operator is absolute and the passenger is helpless as far as self-preservation is concerned. Powerful agencies of locomotion are employed while often the speed of travel is swift and the height attained is perilous. Therefore, the highest degree of human care and foresight is required of those engaged in either

the construction or operation of passenger elevators and they are responsible for the slightest negligence (Goodsell v. Taylor, 41 Minn. 209; 42 N. W. Rep. 873; Tousey v. Roberts, 114 N. Y. 312; 21 N. E. Rep. 399; Lee v. Knapp & Co., 55 Mo. App. 390; Ray on Neg., p. 308). At the same time a carrier of passengers by elevator is not an insurer of the personal safety of those carried. He has discharged his duty to passengers when he has exercised the highest degree of care ordinarily required in such cases (Bourgo v. White, 159 Mass. 126; 34 N. E. Rep. 191. See *post*, § 46). In the case of Mitchell v. Marker (62 Fed. Rep. 139) the court tersely said: "Care short of the highest care becomes, not ordinary care, but absolute negligence." In other words when he has employed the highest degree of care and skill usually exercised by prudent persons in the same business (Kentucky Hotel Co. v. Camp (Ky.), 30 S. W. Rep. 1010).

It naturally follows that what constitutes

the highest degree of care in one case will not be so in another. The inexperience of children, the infirmity of age, the inability of the lame, and all the commonly-known physical weaknesses must be considered by those actually running passenger elevators; and the question of the proper observance of these facts is usually for the jury to determine (Tousey v. Roberts, 114 N. Y. 312; 21 N. E. Rep. 399).

§ 7. **Passenger elevators — Degree of care — Treadwell v. Whittier.** — Continuing the quotation from this case, beginning at the point in the opinion where the court discusses the question of care: "The law holds him to the utmost care and diligence of very cautious persons, and responsible for the slightest neglect. Such responsibility attaches to all persons engaged in employments where human beings submit their bodies to the control by which their lives or limbs are put at hazard, or where such employment is attended with danger to life or limb.

The utmost care and diligence must be used by persons engaged in such employment to avoid injury to those they carry. The care and diligence required is proportioned to the danger to the persons carried. In proportion to the degree of danger to others must be the care and diligence to be exercised; where the danger is great, the utmost care and diligence must be employed."

§ 8. **Freight elevators.**— There have been no decisions of the courts establishing that freight elevators may be common carriers of goods with all the rights and liabilities arising out of such employment, but upon principle this is the law and will be so declared when the questions incident to the relations come up in the courts for adjudication. As a matter of fact probably all freight elevators now in operation are private carriers and assume none of the duties of common carriers. Hence, the courts have only occasionally passed upon the questions growing out of

the relation of owners of freight elevators, as dangerous machines, to their employees, and to trespassers and licensees, as hereafter discussed (*post*, CHAPTER IV).

CHAPTER II.

CONSTRUCTION.

§ 9. **Care in construction.**— In the construction and maintenance of elevators the utmost prudence must be exercised in securing the safety of employees and passengers (Goodsell v. Taylor, 41 Minn. 209; 42 N. W. Rep. 873). Even trespassers and bare licensees are entitled to protection against willful negligence in either the construction or the operation of elevators (*post*, § 71). Competent workmen must be employed and suitable materials used in the construction (McGonigle v. Kane, 20 Colo. 292; 38 Pac. Rep. 367. See *post*, § 12). Although the courts have not yet gone so far, the law should be that owners and operators of both passenger and freight elevators be required to obtain and use thereon the latest approved appliances for securing safety (Mitchell v. Marker, 62 Fed. Rep. 139). Recognizing the deficiency in the judge and

jury made law, special statutes have been passed by the legislatures of a few of the States requiring the use of safety clutches, antomatic doors and other appliances of an approved make, thereby adding to the safety of employees, passengers and others (see Appendix). In determining whether the owner exercised due diligence in making the elevator reasonably safe, the usage of others is not the sole criterion, and it cannot be concluded that, as a matter of law, due diligence has been employed because the elevator is such as is ordinarily used for like purposes by reasonably prudent men (Lee v. Knapp & Co., 55 Mo. App. 390; McCormick Harvesting Mach. Co. v. Burandt, 136 Ill. 170; 26 N. E. Rep. 588).

§ 10. **Proof of prudence.**— In Goodsell v. Taylor (41 Minn. 207; 42 N. W. Rep. 873), where the plaintiff was suing for damages on account of an injury caused by the breaking of the cable in the defendant's elevator, one of the defendant's witnesses was asked the

question "whether or not there is anything in the construction of the elevator, and in the appearance of the cable, that would suggest to a prudent man the necessity for having an examination of this cable at the point where it was pointed out to you as where this break occurred." The plaintiff objected to this question as incompetent, and as calling for an opinion and it was excluded. The court, in reviewing these proceedings in the lower court, said: "The question to what extent the apparent wear impaired the strength of the cable might have been one for an expert, but as held in Mantel v. Chicago, etc., Ry. Co., 33 Minn. 62; 21 N. W. Rep. 853, whether due care requires this or that to be done is not a question for expert testimony. Whether prudence required an examination of the cable was for the jury to determine upon the facts and circumstances of the case."

§ 11. **Proximate cause.**— To maintain an action for an injury caused by the defective

construction of an elevator it must be proved that the defect complained of was the proximate cause of the injury (Gibson v. Lenonard, 143 Ill. 182; 32 N. E. Rep. 182). In a case where it appeared that several months before the injury a piece of the elevator machinery had dropped, and that although the elevator had been in daily use since that time without any accident, it would at times get out of the grooves or guides unless heavily loaded. The accident was the result of the unexplained breaking of a clamp to which the ropes holding the elevator were attached. It has held that the plaintiff was properly nonsuited (Lawson v. Merrall, 69 Hun, 278; 23 N. Y. S. Rep. 560).

§ 12. **Employing competent contractor does not excuse negligence.**— The employment of a person to build an elevator when such person is notoriously incompetent to undertake such a work, is a fact admissible in proof of the owner's want of care. On the other hand the employment of a competent con-

tractor is a fact indicating that the owner exercised due care in the construction of the elevator. But this is not conclusive, for if there be further proof that the contractor although competent was negligent in the performance of the work which was accepted and used by the owner, the owner is responsible for any consequential injury. This responsibility rests upon the theory that the contractor is the owner's agent and that the obligation of care and foresight cannot be shifted where such relations exist (Treadwell v. Whittier, 80 Cal. 595; 5 L. R. A. 498. See Burns v. Sennett & Miller, 99 Cal. 363; *post*, § 46).

§ 13. **Owner's knowledge of defect.**— Where the owner of an elevator has used due care in the employment of a competent contractor and in the selection of his materials he is not liable for an injury caused by some latent defect or by a patent defect which he had not a reasonable opportunity to discover and repair (Black v. Ontario Wheel Co, 19

Ontario Rep. 578; Malone v. Hawley, 46 Cal. 409; McGonigle v. Kane, 20 Colo. 292; 38 Pac. Rep. 367; Turnier v. Lathers, 36 N. Y. S. Rep. 821. (See *Safety Appliances or Clutches, post*, § 23.)

Thus in Robinson v. Wright (94 Mich. 283) the court, in passing upon this point, said: "The sudden breaking or giving way of a piece of machinery, properly constructed, is not sufficient to justify the conclusion of negligence. Machinery well constructed, and apparently safe, and having been tested by use, often gives way from some hidden or unknown defect."

If the defect could have been discovered by the exercise of reasonable prudence on the part of the owner, lessee or operator and was not known to or could not have been avoided by the party injured by the exercise of common prudence, the latter may recover, of the former, damages for his injury (Krey v. Schlussner, 16 N. Y. Sup. Rep. 695). Where an ineffective attempt has been made by the owner to remedy the defect the ques-

tion of care is for the jury to determine (Blake v. Fox, 43 N. Y. S. Rep. 527).

§ 14. **Question for the jury.** — In all cases except where the failure to exercise care is in violation of some statute (*post*, § 20), or willful, or such reckless disregard for the personal safety of others as to amount to negligence *per se*, the questions of fact arising in the case and the estimate of prudence are for the jury to determine. In accord with this general rule it was held proper for the case to go to the jury where the proof tended to show that the accident was due to the faulty construction of the machinery (McGonigle v. Kane, 20 Colo. 292; 38 Pac. Rep. 367); again, where the method of attaching the hoisting rope was defective and unsafe (Malone v. Hawley, 46 Cal. 409); and again, where a cable which had been used three or four years had worn some where it could have been seen if properly looked after (Goodsell v. Taylor, 41 Minn. 207; 42 N. W. Rep. 873).

§ 15. **Unguarded elevator well in course of construction — Contributory negligence.** — While an elevator is in course of construction or of being repaired there are necessary dangers to which all persons coming within close proximity are exposed. The risk of all the dangers ordinarily incident to such employment is impliedly assumed by every employee and all other persons must use commensurate care to avoid such dangers by keeping out of their way. In Headford v. The McClary Mfg. Co. (23 Ontario Rep. 335), where the plaintiff in going to his work in the defendant's building had to pass through a long well-lighted room near a hoist upon which men were at work. As a rule a bar protected the entrance to the hoist but on this occasion the bar was removed on account of the repairs, and plaintiff in looking at a man at work on the hoist walked into the hole in the floor and fell to the cellar below, receiving the injury for which he sued. It was held that the action must be dismissed upon the ground of con-

tributory negligence. The court said, in part: "The men were at work upon the hoist. The evidence is uncontradicted that it was impossible to guard the hole while the men were at work. The fact of the men working on the hoist was present to the plaintiff's mind because it was while observing them that he went into the hole. There is no evidence at all upon which it could be reasonably held that the hole was not guarded as far as it was practicable under the circumstances. Assume a case of a hole being cut in the floor for the purpose of putting in a hoist, and while the men were at work upon the hole a man looking at them should carelessly walk into it. Could it be said that such hole should have been securely guarded against him? It would be securely guarded as far as practicable. In other words, would it have been practicable to have guarded the hole while the men were at work cutting it out and placing in the hoist? Must not one keep away from such a place, or if he go to it, take the risk of being there?"

§ 16. **Unguarded elevator well, near street.**—At common law occupiers of land were entitled to make excavations therein even of a dangerous character and near to public highways. In all the States where this common-law rule has not been repealed by statute the builders of elevators with openings upon or near streets incur no liability to passers-by or trespassers who may turn in and receive injuries. Where this rule prevails, the occupier of land becomes responsible to another injured thereon only where that other has been either expressly or impliedly invited to enter (Webb's Pollock on Torts, p. 216; Whittaker's Smith on Neg. (2d ed.), p. 80). Thus, where one who is partially blind enters by mistake the vestibule of an elevator near the street and falls into the shaft, he was refused damages for his injury.

Again, where the backing of a horse upon the sidewalk of a city street pushed a passer-by into the shaft of an elevator maintained with an opening about eighteen inches from the sidewalk and injured him, the operator of

the elevator was held to be not liable. The court in disposing of this question said: "In this commonwealth the obligation of a city or town to put up guards against pitfalls which are so near to the highway as to make it unsafe for travelers, is similar to the obligation which it seems is imposed upon abutters by the English law. We are not aware that it has ever been decided here, that excavations made by the owner of land outside the limits of a highway, but so near to it as to make it unsafe for travelers, constitute a public nuisance, for the creating or maintaining of which a landowner may be punished; or that in assessing damages for land taken for a highway, any allowance is made to the landowner for the loss of any right to use the land not taken, in the same manner as if a highway had not been laid out." (McIntire v. Roberts, 149 Mass. 450; 4 L. R. A. 19.)

§ 17. **Freight elevators not sheathed.**— Proper care in the construction of freight elevators does not require that they be wholly

inclosed or sheathed, and this may be considered a general rule, although there may be exceptions. The case of Hoehmann *v.* Moss Engraving Co. (23 N. Y. S. Rep. 787; 4 Misc. Rep. 160) was an action brought by an employee for injuries received on a freight elevator in the defendant's business house. The elevator consisted of an open platform with a shaft of four posts from the cellar to the roof, and strengthened by cross-ties extending from one post to another, so that when the elevator passed there was only about one inch space between the platform and the cross-ties. While the plaintiff was riding on the elevator his foot was crushed between the platform and one of the cross-ties. It was held that the elevator was not improperly constructed.

§ 18. **Movable slide.** — An elevator with a movable slide for the purpose of taking on baggage, is not, as a matter of law, improperly constructed; and in a case where plaintiff's intestate either through faintness

or loss of consciousness, sank to the floor while the elevator was ascending and fell through the slide which was open, it was held that the defendant was not liable (Egan v. Berkshire Apartment Assoc., 10 N. Y. S. Rep. 116).

§ 19. **Railings.**— In the construction of passenger elevators the shafts or wells are usually safely inclosed. In some of the States special statutes require that they be made fire-proof (see Appendix). But freight elevators are generally so built that the holes in the floors through which the cars pass are guarded only by railings, sometimes by nothing. No court has directly passed upon this point but it has been held that the fact that others had failed to use such railing is no legal excuse for one's not using it, and that the matter is not such that only an expert could testify to it (McCormick Harvesting Mach. Co. v. Burandt, 136 Ill. 170; 26 N. E. Rep. 588). As a matter of fact such railings are necessary to the safety of

employees and others, and their omission may be of such serious consequence that in cases yet to arise the courts will be constrained to deem their absence conclusive of negligence on the part of the owner of the elevator. Otherwise proof of such facts will have great weight with juries and they will not be slow to decide that the absence of some protection against injury by falling into exposed elevator wells, is ordinarily negligence for which the owner of the elevator is responsible.

§ 20. **Railings — Statutory regulations.**— In a few of the States the dangers of exposed elevator wells has been sufficiently appreciated to induce the enactment of special laws requiring all elevator wells to be protected by railings or automatic trap-doors (see Appendix). And since it is a general rule of law that a failure to perform a statutory duty is negligence *per se* (Whittaker's Smith on Neg. (2d ed.), p. 55, where the cases are collated) it has been held that the violation of these statutes is conclusive proof of

negligence (McRickard v. Flint, 13 Daly, 541; 114 N. Y. 222; 21 N. E. Rep. 153. See Atkinson v. Abraham, 45 Hun, 238; and *Trapdoors*, *post*, §§ 26, 36). Such statutes are admissible in evidence (Dawson v. Sloan, 17 Jones & S. 304; 10 N. Y. 620).

§ 21. **Builder liable to employee of owner, when.**— In Necker v. Harvey (49 Mich. 517) the facts were, in brief, that A. undertook to build for B. an elevator of a specified capacity. The elevator was erected, but did not work well, whereupon A. to attend to it sent a workman who ordered B.'s employees to load it. In obeying this order one of the employees was injured by a defect in the elevator. It was decided that he could maintain an action against A. for his injury. In delivering the opinion, the court said: "When a manufacturer is in possession and is testing his own machinery he owes to every one who may be in danger from it the duty of proper care; and if he exposes any one to danger from his carelessness,— whether the careless-

ness be in handling or in construction — he must answer for the consequences. The duty of care under such circumstances is not a contract duty, but a duty imposed by the common law; and the contract is only important as it evidences the degree of care which the defendant was bound to observe. * * * If the accident had occurred on the day the elevator was set up, and before it had been turned over to the purchasers for use, there would have been no doubt of the defendant's liability; but if he comes back afterwards because of discovered defects, and took charge for the purpose of removing them, the ground of liability would be the same."

§ 22. **Builder not liable to employee of owner, when.**— A very different case is that of Ziemann v. Kieckheffer Elevator Mfg. Co. (90 Wis. 497; 63 N. W. Rep. 1021), where it was held, that one who under a contract places a freight elevator in the building of another upon condition that the elevator is to be operated by the latter

on trial, under the supervision and control of the former, but not to be accepted and paid for until in good and complete running order, will not be liable to an employee of the latter for an injury caused by a defect in the construction of the elevator. The court said: "The contract and its performance on the part of the elevator company did not create any privity or contract relations between it and the plaintiff, as an employee of the Reliance Wire & Iron Works, who had nothing to do with the operation or use of the elevator, and was not attempting to operate or use it at the time of the accident. It is impossible to say, we think, that the elevator company stood in any relations to the plaintiff by reason of which it owed him any special duty, and equally so to hold that it invited him, impliedly or otherwise, to approach the elevator, or to come and be at work near the boot of the elevator shaft."

§ 23. **Safety appliances or clutches.** — The Supreme Court of Massachusetts has said

that the omission of clutches or other safety appliances in the construction of elevators is not conclusive of the owner's negligence although it is a fact which may be proved and considered by the jury in passing upon the other facts (Shattuck v. Rand, 142 Mass. 83; 2 New Eng. Rep. 378). Subsequent to the date of this decision a statute has been enacted in Massachusetts requiring that all elevators be provided with suitable mechanical devices for securely holding the cabs or cars in case of an accident (see Appendix). Under the general rule of law above indicated (see *ante*, § 13), governing the construction and maintenance of machinery which is dangerous to life or limb, where an injury is caused by the want of proper safety appliances it must be shown that the plaintiff did not know, or was under no duty to know of the absence of such appliances and that the defendant either knew or could have known of their absence by the exercise of proper diligence (see Fairbank Canning Co. v. Innes, 24 Ill.

App. 35, cited *post*, § 48). In the case of Hansen v. Schneider (58 Hun, 60; 11 N. Y. S. Rep. 347. See Kayne v. Rob Roy Hosiery Co., 51 Hun, 519; 21 N. Y. St. Rep. 668). Where the plaintiff, who was an employee of the defendant, was injured while riding on a freight elevator in a building leased by the defendants and others, the court said: "This elevator had not been supplied with a safety clutch, which was described to be a bolt or ball connected with a heavy spring kept in tension by a rope, which when slack or broken permitted the spring to shoot the bolt into the slides in the side posts on which the elevator is guided, locking it firmly and immovably there. And it was for the want of this appliance that the defendants were prosecuted to recover indemnity for the injuries. But the defendants were not shown to have been aware of the fact that the elevator had not been provided with this or any other clutch. And the premises had not been so long in their possession or subject to their inspection, as to subject them

to the charge of negligence for not ascertaining that this was its condition * * * And there was no proof that the absence of the clutch was so obvious or conspicuous as to be readily seen by persons examining the lofts for the purpose of hiring, which is the most that they can be assumed to have done. And if that were not a fact, then the defendants could not be legally charged with negligence on account of the elevator not being supplied with a clutch." But the owner is under no duty to passengers to put safety appliances on freight elevators not intended to be used in carrying passengers (Kern v. De Castro & Donner Sugar Refining Co., 125 N. Y. 50; 25 N. E. Rep. 1071; reversing 5 N. Y. S. Rep. 548).

§ 24. **Safety appliances or clutches — Statutory regulations.** — A few of the States have enacted special laws to some extent regulating the construction and operation of elevators, especially with regard to the use of safety appliances (see Appendix). In the province

of Ontario a statute provides that: "All elevator cabs or cars, whether used for freight or passengers, shall be provided with some suitable mechanical device to be approved by the inspector, whereby the cab or car will be securely held in the event of accident to the shipper rope, hoisting machinery or from similar cause." In a case arising under this statute it was held that the burden of proof that an elevator catch had not been approved by the inspector was upon the party alleging it and that a factory would not be declared unlawful because the catch had failed to act, if it had been approved by the inspector (Black v. Ontario Wheel Co., 19 Ontario Rep. 578).

§ 25. **Statutory safety appliances — Owners not insurers.**— A statute which declares that "all elevator cabs shall be provided with some suitable mechanical device, to be approved by the inspectors, whereby cabs will be securely held in the event of an accident" (Mass. St. 1882, c. 208) did not intend that

owners of elevators should be made insurers that the mechanical device used would absolutely and perfectly perform its work under all circumstances. The intention of the statute was that such owners should procure a suitable device, to be approved by the State inspector, and should see that it was kept in order (Bourgo v. White, 159 Mass. 216; 34 N. E. Rep. 191).

§ 26. **Trap-doors.**— A statute in New York (Laws N. Y. 1887, c. 462, § 8) requires that the owner of a factory in which elevators are used shall provide trap or automatic doors at all elevator ways, so as to form a substantial surface when closed. In a case where plaintiff's intestate was at work in the elevator shaft of the defendant's factory, and a barrel on the floor above was set in motion by the vibration of the machinery and rolling into the shaft fell upon and killed intestate, it was held that proof of the defendant's failure to comply with the above statute established *prima facie* negli-

gence on the part of the owner (Freeman v. Glens Falls Paper Mill Co., 15 N. Y. S. Rep. 657; following McRickard v. Flint, 13 Daly, 541; 114 N. Y. 222; 21 N. E. Rep. 153; *supra*, § 20; *post*, § 36).

The duty to provide the trap-doors required by the acts of 1871, 1874 and 1881 of New York, is owing to every one who may be lawfully on the premises; and its fulfillment is not dependent upon the action of the department of buildings or the fire department, or the tenants of the building either separately or collectively, but upon the owner (Michael v. Kronthal, 68 N. Y. St. Rep. 408).

§ 27. **Statutes construed strictly.**— Under a statute in New York (Laws, 1887, c. 462, § 8; see Appendix) requiring proprietors to inclose the shafts of elevators when deemed by the inspector to be necessary for the safety of employees, it was held that no duty devolves upon owners of buildings to procure the inspection of the elevators; that there was

no general duty upon the proprietors of all establishments to provide such safeguards; and that no special duty arose until the discretion of the inspector had been exercised in each particular case, and that discretion rested upon his judgment as to whether such appliances were necessary for the protection of the employees in the particular establishment (Boehn v. Mace, 18 N. Y. S. Rep. 106; 28 Abb. N. C. 138; see *ante*, § 25; also Harris v. Perry, 89 N. Y. 308).

§ 28. **Owner's duty to test elevator.**— To ascertain whether an elevator has been so constructed as to be reasonably safe for use it is the duty of the owner to test the machinery and to duly exert himself to discover any defects of a serious nature. He must employ the best known tests reasonably practicable and if such tests are not used he is wanting in the care and foresight required (Treadwell v. Whittier, 80 Cal. 595; 5 L. R. A. 498). It seems that the same rule of diligence would require him to also periodi-

cally inspect and test the elevator during the time of its operation, with the view of maintaining it in a safe condition.

§ 29. **After-precautions, provable.** — In Marder v. Leary, 137 Ill. 319; 26 N. E. Rep. 1093) it was held to be harmless error to admit evidence that defendants placed a bar across the doorway of the elevator on the next day after the plaintiff was injured.

§ 30. **Prior-condition, not provable.** — Where an employee was moving machinery on a truck from a freight elevator and the wheels of the truck struck the curbing of the elevator on a level with the floor, causing the machinery to fall upon and injure the plaintiff it was held, that evidence as to the condition of the elevator at a time before the day of the accident and as to whether there was anything to prevent the elevator from going below the floor, was rightly excluded (Marnin *v.* Kitson Machine Co., 159 Mass. 158).

§ 31. **Statement of cause of action.**— In stating a cause of action at common law for an injury caused by the defective construction or condition of an elevator it is necessary to allege:—

First, that the particular method, material or appliance was unreasonable, or unsuited, or defective, describing the same specifically, together with the manner in which the plaintiff was injured.

Second, that the defendant knew or should have known these facts, showing the circumstances upon which this allegation is based.

Third, that the plaintiff did not know these facts and had not equal means of knowing them.

Fourth, the amount of damages sustained by reason of the injury, particularly alleging any special damages (Malone *v.* Hawley, 46 Cal. 409; Black *v.* Ontario Wheel Co., 19 Ontario Rep. 578). Thus, in McGonigle *v.* Kane (20 Colo. 292; 38 Pac. Rep. 367) a statement was held to be sufficient where it described the construction of the elevator and

of the floor-fastenings, and alleged that the defendant had failed to supply safe appliances, constructed the elevator in a negligent manner, and used unsuitable and unsafe materials rendering the elevator unfit for its intended use; that the accident was caused by the elevator breaking from its fastenings and falling, describing the details of the accident, pointing out the particular defects which caused the accident, and alleging that the defendant had knowledge of the defects but the plaintiff was ignorant of their existence.

CHAPTER III.

OPERATION.

ARTICLE I.

INJURIES TO PASSENGERS.

ARTICLE II.

INJURIES TO EMPLOYEES.

§ 32. **Duty of operator.**— Although not insurers, operators of elevators are charged with the utmost human prudence in caring for the safety of the lives and limbs of all who lawfully enter or approach their elevators. They are bound to employ competent servants,

keep the entrances and immediately adjoining floors sufficiently lighted and exercise due care in the performance of every act incident to the running of elevators. Thus in Mitchell v. Marker (62 Fed. Rep. 139) it was held that a landlord who runs an elevator for the accommodation of his tenants and their visitors must use the highest degree of care which human foresight can suggest, not only as to the conduct of his servants but as to the condition of the machinery (see Gordon v. Cummings, 152 Mass. 513; 9 L. R. A. 640). This case suggests the general rule that the operators of elevators are liable for accidents caused by their want of reasonable diligence in looking after the condition of the machinery and appliances (see Heske v. Samuelson, 12 L. R., Q. B. Div. 30; 53 L. J., Q. B. Div. 45; Bier v. Standard Mfg. Co., 130 Pa. St. 446). Bearing upon this point it has been decided that one has no right to assume that because a certain elevator has never given way, it therefore never will (Goodsell v. Taylor, 41 Minn. 209; 42 N. W. Rep. 873).

§ 33. **Obligation to person injured.**— To render a person responsible to another for injuries received from an elevator it must be shown that the former owed some duty to the latter to prevent such injury. While the owner of an elevator may be always held responsible for inherent defects in its construction if he leases the use of it to another or in any way completely surrenders its control to another, he becomes no longer liable for injuries caused by negligence in its management. In this instance the duty towards passengers, employees and others is shifted from the owner to the actual operator, who is also responsible for the proper management of the elevator (Troth v. Norcross, 111 Mo. 630).

But instead of the obligation arising from the relation of carrier and passenger or master and servant, it may arise from the duty of a landlord to his tenant or innkeeper and traveler. Thus, where a suit was brought by a guest against the keeper of a lodging house for injuries received by the

former in falling into the unguarded shaft of an elevator while searching for a water closet in the night, it was held that the action might be maintained. The court said: "Granting that defendant had no control of the elevator shaft, or the small hall leading to it, it was his duty to have maintained a door or barrier at the entrance from the main hall to the small hall which led to the dangerous aperture." (Mauzy v. Kinzel, 19 Ill. App. 571.)

§ 34. **Obligation to person injured — Volunteer.**— The wife of the janitor of an apartment house or hotel, for the purpose of showing a new tenant where to hang clothes, went, at the request of her husband, to the roof by a stairway. In returning she used a freight elevator, which she entered by stepping over a rail or bar placed across the entrance to the elevator about eighteen inches from the floor, and locked. She chose that method of descent for her own convenience. She was not shown to have had any knowl-

edge of a rule forbidding the riding on the elevator, and she had seen others riding on it without objection from the superintendent of the building. In an action against the owner of the hotel for damages for injuries sustained by reason of the alleged defective condition of the elevator, it was held, that the plaintiff was a "volunteer, using the elevator without any authority or license whatever from the defendant for the purpose of assisting her husband, and that the defendant owed no duty to her to see that the elevator was in a safe condition, but only to abstain from willful injury to her." (Billows v. Moors, 162 Mass. 42).

§ 35. **Motorman's negligence — Want of light.**— Where defendant owned a house and operated an elevator for the convenience of the tenants, of whom plaintiff's husband was one, and plaintiff went to the elevator door, to go up, when it was opened by a boy on the outside who was the brother of the regular motorman and who had occasionally managed

it, and she, ignorant that the elevator was already above, stepped through the open door into the shaft and was injured. There was no artificial light near at the time and the proof as to the necessity for it was conflicting. It was held that the question of the sufficiency of care for the safety of the tenants was for the jury to determine (Tousey v. Roberts, 14 N. Y. 312; 21 N. C. Rep. 399). So where the plaintiff went into a dark hallway and stood before the elevator door for one or two minutes waiting for the elevator boy to bring the key with which he opened wide and outwardly the elevator door and stood behind it while plaintiff stepped in through the entrance, and, the cab not being there, fell down the shaft and was injured; it was held, that the finding of the jury for the plaintiff should not be disturbed (Fisher v. Cook, 23 Ill. App. 621; 125 Ill. 280; 17 N. E. Rep. 763).

§ 36. **Want of light — Plaintiff's care.**— Where an elevator shaft opened directly upon

the street and within one foot of the entrance to the hallway in the same building; which hallway entrance was always opened while that of the elevator could be closed; and the plaintiff in seeking to enter the hallway on a dark evening, with no light near, stepped into the elevator entrance, which was not closed and was injured, it was held that the jury might find it to be negligence to leave the elevator so exposed. Upon the question of the plaintiff's want of care the court said: "There remains the question whether the plaintiff offered any sufficient evidence of due care. He knew the character and description of the premises; he passed them many times, and was aware that the two entrances were close to each other; but his previous knowledge of their dangerous proximity is not conclusive that he was not exercising due care in attempting to enter (Looney v. McLean, 129 Mass. 33). He described the care with which he moved, his feeling his way, his effort to ascertain when he stepped upon the threshold that he was in

the right entrance." (Gordon v. Cummings, 152 Mass. 513; 25 N. E. Rep. 978.)

§ 37. **Plaintiff's care — Similar case.**— A case in which the facts are somewhat similar to those in the above case is McRickard v. Flint (114 N. Y. 222), in which it appears that the plaintiff went to a building to see one of the defendants. He was directed to another building in the rear, to which he went, but not finding the defendant there he returned to the building which he first approached and seeing a folding-door, one-half of which was partly open, he entered, although this was not the usual place of entry into the building. About nineteen inches from the door-sill was an open elevator hatchway into which he fell and was injured. The plaintiff testified that he supposed that he was entering through the main entrance; that the hatchway was not in his view; that as he entered he saw the saddle of the door-sill and the floor and supposed that the latter was continuous; that he saw no elevator shafting;

and that the door obscured the opening and he did not see it. Under these facts it was held, that the failure of the plaintiff to stop and look around him when he entered did not charge him with contributory negligence as a matter of law, but that the question was properly submitted to the jury.

§ 38. **Conductor not always necessary.**— In Murphy v. Hays (68 Hun, 480; 23 N. Y. S. Rep. 70), it was held that negligence could not be charged against the defendants because no conductor was in the car where the intestate, while assisting in removing an iron safe from the elevator, was killed by the sudden starting of the elevator turning the safe upon him; it being the opinion of the makers of the elevator, and of the engineer in charge, that, considering the great weight of the safe and the high pressure necessary, the safest method was to keep the car under the control of the engineer who was directed from above by the janitor, although some experts testified otherwise. The court said, in part: "That it was

not negligence to act upon their best judgment, and the advice of those who constructed the elevator, must become apparent if for a moment we stop to consider what would be the effect of their acting contrary thereto in the event of an accident occurring. It was the view and judgment of those who constructed the elevators, and who knew the character of the pumps and the extent of the power required for raising large safes, and that of the engineer who had prior to this time adopted the system, that the safest and best mode was for the engineer to have complete control over the movement of the car, and that the interference of a conductor on the car would be a source of danger on account of the high pressure employed."

§ 39. **Using plank instead of skid in moving goods from elevator.**— Where a porter in the defendant's store was working in the cellar by pushing heavy boxes of goods near the elevator when a heavy plank used instead of the regular skid in removing similar boxes from

the elevator to trucks in the alley back of the store, slipped and fell down the elevator shaft, striking and injuring the plaintiff, it was held, that the use of the plank in removing the boxes was not in itself negligence (Alford v. Metcalf, 74 Mich. 369; 42 N. W. Rep. 52).

§ 40. **Accident no ground for action.**— While the plaintiff was engaged in loading bales of hops into his wagon as they were lowered by the elevator, one of the bales on the wagon, for some unexplained cause, turned, striking him in the breast so that he was either thrown or stepped back, and fell into the shaft of the elevator and was injured. It was held, that no negligence could be imputed to the defendant, since the injury was either the result of the negligence of the plaintiff or his companion, or both, or of pure accident (Moll v. Riverside Storage & C. Co., 82 Mich. 389).

§ 41. **Liability of tenants in common.**— Where two or more tenants in a building

have equal rights to operate an elevator erected therein for their common convenience, each tenant is liable for his own negligence in the use of the elevator but not for the negligence of any other tenant (Donnelly v. Jenkins, 58 How. Pr. 252). The case of Kent v. Todd (144 Mass. 478; 11 N. E. Rep. 734) was an action of tort for damages suffered by the plaintiff in consequence of falling through a hoistway. The plaintiff was a tenant of the second floor and the defendant of the first floor of the building, under leases which gave each party the use of the hoisting in common with the other tenants. The hoistway was divided from the rooms through which it passed with bolted doors opening into it on each floor, and, when not in use could be closed by two trap-doors, which made the floor continuous. There was also a bar which could be put across the entrance when either trap-door was open. To lawfully use the hoistway, the defendant's servant unbolted and opened the entrance door,

opened one of the trap-doors, then shut and bolted the entrance door again. Prior to this the plaintiff had placed a basket of chickens inside the partition, seemingly in such a way as not to interfere with the use of the hoistway, and when afterwards he was about to go home, he unbolted and opened the entrance door and, in order to get them, went in, fell and was injured. It was held that the plaintiff, although using the hoistway for a purpose other than that for which it was designed, was not a trespasser, and that if the defendant had given the plaintiff the right to expect that when the trap-door was opened the bar would be put up and the entrance bolted, the plaintiff had the same right to rely upon this having been done when going to the hoistway for a basket of chickens as when going there to receive goods.

§ 42. **Tenants in common — Contributory negligence** — Where an elevator in a hallway of premises used by several tenants in common is proved to have been properly inclosed and

provided with doors which were kept shut while the elevator was not in use and the deceased opened the door through which he fell, he was guilty of contributory negligence and none of the other tenants were liable for his death (Donnelly v. Jenkins, 58 How. Pr. 252).

§ 43. **Tenants in common — No presumption against.**— Where the plaintiff fell down an elevator shaft and for the injuries thereby sustained sued one of two occupants of the building at whose invitation he was lawfully there, and it could not be shown that the defendant had used the elevator last, it was held, that no presumption of negligence could be raised against the defendant, and, no negligence being proved, the plaintiff's action could not be maintained (Harris v. Perry, 89 N. Y. 308; reversing *s. c.* 23 Hun, 244). In this case the substantial facts were that defendant leased all of a building above the first floor which with the basement and sub-cellar was

leased to other tenants; all the tenants had a common right to use the shipping room in the basement and a hoistway or elevator for goods running from the sub-cellar to the upper story, moved by power furnished by the owners of the building and controlled by their engineer. The plaintiff went to the shipping-room to procure goods purchased of the defendant, and finding no one there to deliver them, went to the elevator to call through the opening overhead as he had safely done before. The room was dark and the elevator was not in use at the time but was up near the first floor. The trap door in the basement floor was open and the plaintiff inadvertently fell through and was injured. In the action for damages which followed it did not appear that the defendant had used the elevator last and only the supposition of the clerk indicated it; hence the conclusion above stated.

§ 44. **Res ipsa loquitur.**— Ordinarily it is not enough for the plaintiff to prove the fact

of the accident having happened, and his injury; but it must be further shown that the injury was the direct result of some particular act or acts by the defendant evidencing want of due care on his part. There may be accidents in which the circumstances themselves speak proof of the defendant's negligence, but usually explanatory evidence is necessary to establish negligence. Thus, where an elevator was run by weights suspended and kept in place by iron rods and one of the weights became detached and fell, injuring the operator of the elevator car, it was held that negligence could not be presumed from the accident (Davidson v. Davidson, 46 Minn. 117; 48 N. W. Rep. 560; see Lee v. Knapp & Co., 58 Mo. App. 404; Huey v. Gahlenbeck, 121 Pa. St. 238). On the other hand in Gerlach v. Edelmeyer (47 N. Y. Super. Ct. 292), where a hod-elevating machine was operated under a contract with a builder who was erecting a building and the elevator fell, injuring the plaintiff, the court said: "The elevator

was under the management of the defendant's servant and in the ordinary course of events the accident would not have happened, if the servant had been careful. The happening of the accident, therefore, affords evidence, in the absence of explanation, that the accident happened for want of care." (See Webb's Pollock on Torts, p. 550, n.)

§ 45. **Burden of proof.**— In an action for damages because of injury sustained in the operation of an elevator the burden of proof of the defendant's negligence is on the plaintiff. In some of the States the plaintiff is also required to prove himself free from negligence. In Treadwell v. Whittier (80 Cal. 582; 5 L. R. A. 498), the court said: "The law requires proof that the plaintiff has sustained an injury by the breaking of the machinery by which he is carried or transported, and that such machinery was under the control and management of the defendant. When plaintiff has made such proof, he has made out a case which entitled

him, if not rebutted or disproved, to recover of the defendant. The plaintiff by such proof has made a case showing negligence on the part of the defendant. The burden is then thrown on the defendant to show that he was not guilty of negligence for which he could be charged. This can be done by going into proof of the manner in which the hurt occurred and showing that it was caused by an inevitable causality for which the law imposes on him no responsibility, or by establishing any fact which relieves him of responsibility."

ARTICLE I.

INJURIES TO PASSENGERS.

§ 46. **Care for passenger's safety.**— As has been above said (*ante*, § 6), carriers of passengers by elevator are bound to exercise the highest degree of human care for the personal safety of the passengers. Every reasonable precaution must be observed by the elevator attendant or attendants in guarding passen-

gers from the dangers usually incident to the use of passenger elevators. To illustrate, in the case of Mitchell v. Marker (62 Fed. Rep. 140), it was held to be the duty of the motorman to allow the passengers time to adjust themselves on the car, and obtain their balance, before starting swiftly upward.

Again, in McGrell *v.* Buffalo Office Bldg. Co. (70 N. Y. St. Rep. 372), it was held that the conductor on an elevator car, which was only a platform with side pieces for passengers to hold to, should warn a passenger, who was only nine and a half years of age, how to protect herself, before he started the car upward with its usual rapidity. On account of the peculiar construction of the car the conductor "was aware that the child was quite likely to lose her equilibrium if he started the car rapidly. He knew, or should have known, that she was to be thrown down on the floor of the car. His observation had taught him that strong adults were liable, as the car starts,

to lose their balance, and are frequently compelled to step about in the car to prevent falling."

§ 47. **Motorman's duty to announce floors.**— It is the duty of the attendant operating the elevator to in some way indicate the arrival of the car at the floor number requested by passengers. This may be done by calling the numbers or in less formal methods. Thus, in Mitchell *v.* Keane (87 N. Y. 266; 33 N. Y. Sup. Rep. 1045; 67 N. Y. St. Rep. 731), the plaintiff, having some telegrams to deliver in the defendant's building, entered the elevator and showed the telegrams to the motorman, who took them, looked at them, handed them back and started the elevator upward, stopping at the third floor. The plaintiff approached the elevator door, put out his foot and waited for it to be opened, when the motorman started the elevator again without notice to the plaintiff, whose foot was crushed by being caught in the top of the door. It was

held that the evidence was sufficient to sustain a verdict for the plaintiff.

The court in reviewing this point said: "It is claimed that the complaint should have been dismissed because no negligence had been proved against the defendant. It is urged that the stoppage of the elevator by the elevator man without saying, or having said a word to intimate that it was the floor at which the plaintiff was to alight, and without opening the door of the elevator shaft, should not and could not have been considered by the plaintiff as an intimation that he had arrived at the floor at which he was to get out of the elevator. We think, however, this error. There were no other persons in the elevator; the elevator man knew the person whom the plaintiff desired to see for the purpose of delivering the dispatches; and when he stopped the elevator the plaintiff had a right to assume that he had arrived at the floor upon which he was to alight. It was not negligence upon his part to place himself in a position to leave the

elevator as soon as the door of the shaft should be opened. After such stoppage it was the duty of the elevator man, before starting the car again, to see that there was no danger in starting the car, or to give the plaintiff some notice that he had not arrived at his destination. This he utterly failed to do."

§ 48. **Operator's duty to guard open entrance.**—In Morrison v. Metropolitan Tel. Co. (52 N. Y. St. Rep. 601) the plaintiff brought suit upon these facts: With the exception of some electric apparatus the elevator in the defendant's building was in good order, and was just starting upward when plaintiff's intestate, who was a letter carrier, rushed to the door and crowded past a man who stood at the open door to pass in tools and guard the entrance, but who gave no warning or obstruction to the deceased. It was held, that it could not be said, as a matter of law, that the deceased had not a right to rely on the appearance presented, the court saying:

"The deceased man was doubtless in haste, all are in haste at mid-day in that great city, and it is assumed to be no uncommon sight to see persons around the door of an elevator. It is not supposed to be a place of danger to be approached with caution and if persons are standing at the door it would be no unnatural assumption to assume that they were either there for no purpose or were going in or coming out."

§ 49. **Passenger's contributory negligence.**— Contributory negligence by the passenger bars his right to recover damages for any injury. This is an absolute rule of law and the only questions which can arise under it are what facts are sufficient to constitute contributory negligence. There are already several cases, which will be here briefly digested as far as they relate to this special object. Where the door of an elevator was thrown open by a boy who was accustomed to throw it open, it was not, as a matter of law, contributory negligence in the plaintiff to pass

through the door without stopping to look and listen. "An elevator for the carriage of persons is not like a railroad crossing at a highway, supposed to be a place of danger, to be approached with great caution; but on the contrary, it may be assumed that when the door is thrown open by an attendant, to be a place which may be safely entered without stopping to look, listen or make a special examination." (Tousey *v.* Roberts, 114 N. Y. 318; 21 N. E. Rep. 399. See Whittaker's Smith on Neg. (2d. ed.), p. 483, n.)

Where a person recklessly puts his head in an exposed well-hole, he cannot recover, and the fact that the elevator boy failed to sound a whistle, which he carried, to warn passengers of his descent, is not negligence (Mau *v.* Morse, 3 Colo. App. 359).

In Guichard *v.* New (65 N. Y. St. Rep. 20), it was held to be a question for the jury, whether a child of eight and a half years of age is guilty of contributory negligence in thrusting its head into an elevator shaft.

§ 50. **Passenger's contributory negligence — Minors.**— A fifteen-year-old boy, who was familiar with the elevator, stairs and halls of an apartment hotel where he was accustomed to deliver goods to various tenants, went to deliver goods to certain tenants. The elevator was in two parts, the upper part being for passengers and opening into the front halls only, the lower part was a freight box with no door but with openings and a sliding door to the elevator well opened on the inside from the elevator. In going up passengers were delivered at the first floor, and at the first suit the boy being informed by the motorman that this was the floor he wanted, got off, leaving goods for other tenants in the freight box. Leaving the door in the elevator well open he delivered the goods about five feet away, and turning back, thinking that the elevator was still there but without looking to see, it being quite dark, he stepped into the open door and fell to the bottom of the well and was injured. It was held that he could not recover for the injuries received (Ballou v. Callamore, 160 Mass. 246).

Where a boy under seven years of age, at the invitation of a boy operating the defendant's passenger elevator in a hotel, placed himself on the elevator floor with his back close to the door, and, on turning, when addressed by the elevator boy, his foot was caught between the elevator door and the joists and crushed, it was held that a verdict for the plaintiff should be sustained; and that it is proper to charge that the plaintiff was not guilty of contributory negligence, unless he failed to exercise that degree of care for his safety which "ordinarily careful and prudent children of his age and experience are accustomed to observe under the same or similar circumstances." (Kentucky Hotel Co v. Camp (Ky.), 30 S. W. Rep. 1010).

ARTICLE II.

INJURIES TO EMPLOYEES.

§ 51. **Duty to warn and protect.** — It is the duty of operators of elevators to duly instruct employees working either on or about their

elevators so that such employees may have a reasonable opportunity of knowing the risks and dangers of their employment. It is the duty of each employer to specially warn those in his employment of any risks or dangers peculiar to the elevator or elevators on which or about which they are employed (Connors v. Morton, 160 Mass. 333). However, should an employee have all the knowledge both general and special, which employers are ordinarily required to impart, this is sufficient and the employer is not required to give him the usual notices and instructions (see Hart v. Naumburg, 123 N. Y. 641; 25 N. E. Rep. 385; reversing 3 N. Y. S. Rep. 227). It is the duty of the operator of an elevator to use due care to protect the employees against injury from defects in the machinery, to promptly repair discovered defects, to employ careful persons to work on or near to elevators and to use care for the protection of repairers while at work (Donovan v. Gay, 100 Mo. 440; 11 S. W. Rep. 44). One who knowingly employs incompe-

tent servants will be responsible not only for resulting injuries to strangers but also for injuries to their fellow-servants.

§ 52. **Duty of employer to furnish safe machinery.**— The duty of operators of elevators to furnish their employees with suitable and safe appliances to be used in the course of their employment is well stated by the court, in the case of Burns v. Sennett & Miller (97 Cal. 363), as follows: "The general rule is that an employer must furnish machinery and appliances reasonably suitable and safe for the employee to do his work. In such a case the employer is, of course, not bound to insure the employee against any defect in such appliances; but he is bound to use reasonable care in their selection and construction. And where that rule applies, the duty to furnish such machinery and appliances is one which the employer owes personally to the employed; and he cannot escape that duty by trusting it to an employee who negligently performs it."

§ 53. **Knowledge of defects.**— As heretofore seen (*ante*, § 13), if impairment of the elevator occur during the course of its operation the employer, to be liable, must have actual knowledge of the fact or a reasonable opportunity for discovering it and the employee ignorant of its existence.

Thus, where an employee is familiar with the construction and use of a freight elevator and knows that a weight placed upon the car will cause it to descend, unless the brake is set according to the weight and locked, it is his duty to see that the brake is properly set and locked before using the elevator (Robinson v. Wright, 94 Mich. 283).

In O'Brien v. Sanford (22 Ontario Rep. 136), a twelve-year-old boy was employed to run an elevator in a factory. The elevator was worked by ropes on the outside of the cab which were handled by the person within through an opening in the side of the cab. He was instructed for a few days by a bigger boy, but was not cautioned not to put his head out of the opening when the eleva-

tor was going. On the occasion in question the elevator stopped when going up, which it had often done before, but of which the young boy had not been informed and he put his head out of the opening to see what stopped it, when it suddenly started again and he received injuries for which he sued. In their opinion the court said: "It is clear that care was not exercised (by the proprietors) and when the machine stopped in its ascent, the child was taken by surprise; he did what most likely an older person on the spur of the moment would have done; and even had he been told in a casual way not on any occasion to put his head out of that opening, I doubt whether he would have been guilty of contributory negligence. There was nothing more natural than for him to look to see, if he could, what was the cause of what was to him an extraordinary event in the passage of the elevator."

§ 54. **Employee does not assume risk of latent defects.**— From the case last referred

to it appears that the risk of defects in elevators to which the attention of employees had not been directed and the existence of which could not have been discovered by them by the exercise of reasonable diligence are not assumed by such employees as incident to their employment. In the case of Fairbank Canning Co. v. Innes (24 Ill. App. 35), the material facts were succinctly stated in a part of the opinion of the court as follows: "It further appears that a steam-brake, which was on the elevator, was removed, and it does not appear that the attention of Innes (the motorman), was called to the fact that there was no air or steam-brake upon it when he was placed in charge of it. So far as external appearances went, the elevator appeared to be in good condition. The superintendent told Innes when he went upon the elevator that he must look out and run at his own risk, and Innes told him not to be afraid, that he had run an elevator for twenty years. * * * We think that the conversation had reference to his care

and his competency, and that it cannot be understood as an agreement on his part that he took the risk of defects in the construction or machinery of the elevator which were unknown to him, or that it can be construed to relieve the appellee from the duty of using reasonable care to provide upon the elevator such appliances for safety as were known and in general use."

§ 55. **Employee's contributory negligence.**— While the case just quoted from presents facts insufficient to support a conclusion of contributory negligence, in Kaufhold v. Arnold (163 Pa. St. 269), are statements which seem to support such a conclusion, the material facts being that a boy under twelve years of age, who was employed to carry waste material down an elevator, was injured by standing on the automatic doors closing the elevator shaft, while the elevator was ascending from below him.

In Rood v. Lawrence Mfg. Co. (155 Mass. 591), the facts briefly were that a

nineteen-year-old boy was set to running a freight elevator, the car of which was formed of crossed iron rods joining the platform with parallel cross-beams at the top; and which was set in motion and stopped by means of a shipper-rod outside. Another boy, directed by his employer to teach him how to run the elevator, showed him how to pull down or turn the shipper-rod to stop the elevator in its descent, but he had no further instructions. Subsequently while descending from an upper floor and before passing it, he put his hand out above the crossed rods and below the cross-beam, and grasped the shipper-rod so as to stop at the floor below. He held to the shipper-rod until his hand was caught between the cross beam and the edge of the opening in the upper floor, and was injured. It was held that he could not maintain an action for his injuries.

In Degnan v. Jordan (164 Mass. 84) the plaintiff was, at the time of the accident, an elevator tender, forty-three years of age, who

had been running the elevator for defendants for about a fortnight and understood his business fairly well. Finding the elevator below the first floor he went down into the basement as he had been told by the engineer to do in such a case, meeting there a man who told him he could not move the elevator. Thereupon, without reporting to the superintendent of elevators or to the engineer, plaintiff stooped into the elevator well under the elevator for the purpose of reaching the elevator rope which was in one corner, and as he pulled the rope the elevator came down on him, causing the injuries complained of. The court said: "We think that, in view of the notice he had from the situation of the elevator that something about it was probably out of order, his conduct in exposing himself to injury from this sudden descent was wanting in due care."

§ 56. **Contractor and not owner, liable.** — As above seen (*ante*, § 12) if the relation of principal and agent or master and servant

exists between the owner of the premises and a contractor who is building or running an elevator thereon, in which event the servants of the contractor become the servants of the owner and render him responsible for their negligent acts. But this relation may not exist. The contractor may be what is frequently called an "independent contractor" over whose work and conduct the owner of the premises has absolutely no authority or control. In this case the contractor only is liable for his own negligence and that of his servants. Such were the facts in Barrett v. Singer Mfg. Co. (1 Sweeney (N. Y.), 545) in which case the statement shows that the plaintiff's husband was killed by the falling of an elevator, which was, at the time of the accident, possessed and operated by or for the defendant's contractor. The defendant had no control over the operation of the elevator but merely gave the use of it to the contractor and supplied the power. It was held that the defendant was not responsible for the death.

§ 57. **Proof of similar injury.**— Proof of a similar injury to another person, received under different circumstances, in another elevator of the defendant's of like construction, of which injury the defendant had notice, is inadmissible evidence, being collateral to the issue (Wise v. Ackerman, 76 Md. 375; 25 At. Rep. 424).

§ 58. **Employment of minors.**—Operators of elevators who employ minors must use care for their safety which is commensurate with their age, experience and opportunities for observation. And where the employment of minors under a certain age is prohibited by statute, more than ordinary precautions for their well-being and safe-guarding must be exercised by their employers (O'Brien v. Sanford, 22 Ontario Rep. 136). The rule of law should be in harmony with the well-established principle that the intentional violation of a statute is negligence *per se* (see *ante*, § 20).

§ 59. **Judicial notice of the incapacity of children to run elevators.**— In the case of Smillie v. St. Bernard Dollar Store (47 Mo. App. 407), where a twelve-year-old boy was employed in a retail store to operate the elevator on which the other employees including many minors were accustomed to travel in the course of business, it was insisted by counsel for the plaintiff that the employment of the boy operator under the circumstances was in itself negligence and that of this the court should take judicial notice. The majority of the court rejected this proposition, delivering an opinion to which Judge Thompson very properly excepted and delivered a dissenting opinion which states the law as it should be, as follows: "Elevators in large buildings, operated either by steam or by hydraulic power, designed to carry persons or freight between the lower and higher floors, have come into such common use that the courts may well take judicial notice of their physical characteristics. So many accidents have been caused to persons on these machines,

either owing to their defective construction, their non-repair or their defective operation, that those who are appointed to administer justice cannot refrain from taking notice of their dangerous character. * * * We must also take judicial notice of the fact, that young boys act inconsiderately and from impulse, and that they are apt to get careless. Such being the dangerous character of these machines, and such being the well-known tendencies of young boys, I am prepared to say that to put a boy of twelve years old in charge of such a machine in a retail store, where other young boys are employed whose duty required them to go up and down on the machine, is evidence of negligence to go to a jury, as a mere conclusion of law."

§ 60. **Fellow-servants.**— Employees in the same general line of employment are regarded as fellow-servants, and for their injuries to each other they are responsible, but their employer is not. The only difficulty in deter-

mining questions of this sort is in deciding who are fellow-servants and who are not.

Where an elevator worked by an engine and used to raise grain into a barn fell through the negligence of the engineer and injured the plaintiff who was a servant on the defendant's farm, it was held that he was a fellow-servant of the engineer and not entitled to recover (Stringham v. Stewart, 27 Hun, 562; 64 How. Pr. 5; see Kelly v. Boston Lead Co., 128 Mass. 456).

So persons engaged in removing goods from a store, one at the elevator and others at the trucks, are fellow-servants (Alford v. Metcalf, 74 Mich. 369; 42 N. W. Rep. 52).

And a laborer employed in building a bridge and the engineer operating the hoisting machinery are fellow-servants (Ryan v. McCully, 123 Mo. 636).

Where the plaintiff, a mason employed with other masons, section men and carpenters, in the erection of a windmill and water tank for the defendant railroad company, was injured by the falling upon him of a

portion of the framework of the windmill which he was helping to raise, the apparatus for raising such framework, consisting of a windlass, ropes, tackle-blocks; the water tank itself and an anchor post set in the ground about sixty feet away, all set in position under the direction of the foreman, and the fall of the framework being caused by the giving way of the anchor post, it was held that the whole apparatus for hoisting consisted of only one machine. The court said: "But it is claimed that, as the plaintiff, Brooks, was a superior servant, or so represented the company in doing the work as to make it liable for his negligent acts. There are surely cases which hold that a servant may recover in any action against the master for an injury occasioned by the negligence of another servant when the latter is engaged in a different or distinct branch or department of service. But it seems to us that Brooks and the men under him must be regarded as fellow-servants engaged in the same common work or em-

ployment. * * * It is true, Brooks had charge of this work of erecting the tank and windmill. In certain cases it appears he was authorized to discharge a man under him who did not work to suit him and hire another in his place. But he had no general authority to hire and discharge men under him. * * * They were certainly all subject to the control and direction of the same master, and were engaged to do the same work." (Peschel v. Chicago, etc., Ry. Co., 62 Wis. 338.)

§ 61. **Fellow-servants — Vice-principal.**— If a foreman or contractor has absolute control of the work with power to direct the methods of conducting it and employ and discharge workmen at his option the owner of the work may be responsible to workmen for injuries inflicted by the negligence of the contractor or foreman, since he is not a fellow-servant but is in a relation which in America is called that of "vice-principal." (See *ante*, § 12.) Thus, in a suit by A., a servant, against N., his master, for injuries caused by the fall of

an elevator used in N.'s business for raising goods and upon which A. was ascending when injured, evidence was introduced that N. had instructed his foreman to warn the men of a rule of the house prohibiting their going on the elevator. It was held, that an instruction by the *nisi prius* judge that if there was such a rule, and the foreman neglected to give notice of it to the men, it was a fault of a fellow-servant and that A. could not recover, was erroneous (Avilla v. Nash, 117 Mass. 318).

CHAPTER IV.

INJURIES TO TRESPASSERS AND LICENSEES.

§ 62. **Licensees.**— In accepting the benefits of a license one assumes all the risks of danger incident thereto except those caused by the willful negligence or affirmative acts of the licensor. Thus, where a fire insurance

patrolman in endeavoring to protect goods from fire and water used an elevator, loaded with merchandise, which was so constructed as to show that it was intended for the carriage of freight, when he might have gone another way, he assumes the risk of the elevator being out of order, since he had no invitation either express or implied to use the elevator. Upon this point the court said: "The fundamental inquiry in this case is whether or not appellee owed a duty to appellant to so construct, keep, and maintain the elevator or hoisting apparatus as that it should be a safe means of his transportation from one story of the building to another? Actionable negligence or negligence which constitutes a good cause of action, grows out of a want of ordinary care and skill in respect to the person to whom the defendant is under an obligation or duty to use ordinary care and skill. The owner of land and of buildings assumes no duty to one who is on his premises by permission only as a mere licensee, except that he will refrain from willful or affirmative acts

which are injurious. As was said in Sweeny v. Railroad Co., 10 Allen, 368: 'A licensee, who enters on premises by permission only, without any enticement, allurement, or inducement being held out to him by the owner or occupant, cannot recover damages for injuries caused by obstructions or pitfalls. He goes there at his own risk, and enjoys the license subject to its concomitant perils.'" (Gibson v. Leonard, 143 Ill. 182; 32 N. E. Rep. 182. See Norris v. Catmur, 1 C. & E. 576.)

§ 63. **Improper use of appliances.**— In the case of Ritterman v. Ropes (51 N. Y. Super. Ct. 25), the facts were, that the defendant was the owner of a building containing an elevator used to carry goods to the several occupants, the customary mode of raising the goods being for the party delivering them to stand on the ground floor and raise the elevator, without going up with it. The plaintiff having some goods to deliver placed them on the elevator and while raising

the elevator in a jerking and intermittent manner, and looking up the shaft, he was struck by a part of the goods falling upon his head. The court said: "As a matter of law, it could not be determined that the plaintiff could have thought that the way in which he raised the elevator was not such as was necessary to its use."

§ 64. **Invitation.**— Where a person invites another upon his premises he is bound to exercise more than ordinary care towards that other. If the person giving the invitation is alone benefited he is responsible for even the slightest negligence. The reason of the rule is that one inviting another to come upon his premises is not expected to be drawing that other into a place of danger but offering at least ordinary safety, so that the person invited is put off his guard and relies upon the implied warranty of safety. Thus, a store-keeper who either expressly or impliedly invites the public to enter his place of business for the purpose of trading must

exercise a high degree of care to keep the premises in a safe condition, and where a customer, or any one having any duty there, is injured by accidently falling into a negligently exposed elevator shaft, the shopkeeper is liable in the absence of negligence on the part of the person injured (Treadwell *v.* Whittier, 80 Cal. 574; 22 Pac. Rep. 266; see Oberfelder *v.* Doran, 26 Neb. 118; 41 N. W. Rep. 1094; Engel *v.* Smith, 82 Mich. 1; and see Whittaker's Smith on Neg. (2d ed.), p. 280, n.; citing Turner *v.* Kelekr, 27 Ill. App. 391; Snyder *v.* Witner, 82 Ia. 652; 48 N. W. Rep. 1046; O'Brien *v.* Tatum, 84 Ala. 186; 4 So. Rep. 158; Clopp *v.* Mear, 134 Pa. St. 203; 19 At. Rep. 504; 25 W. N. C. 571, and other authorities).

§ 65. **Mail-carriers may enter buildings.**— Where the tenants of the upper stories of a building maintain boxes for the reception of their mail in the lower hallway, which is controlled by the owners of the building, and the letter-carrier who enters the hallway for the

purpose of placing mail in the boxes is injured by falling into the elevator well, it was held, that the jury are authorized to find that he enters by the implied invitation of such owners, and it is immaterial that the building is used for workshops and not offices (Gordon v. Cummings, 152 Mass. 513; 9 L. R. A. 640; see Morrison v. Metropolitan Tel. Co., 52 N. Y. St. Rep. 601; *post*, § 48).

§ 66. **Trespassers riding on freight elevators.**— As above intimated, owners of land are under very limited obligations to those who go upon it without invitation of some sort. Trespassers enter at their own peril. An example of quite frequent occurrence and which seems to come under this rule, is that of persons riding upon freight elevators which they know are intended exclusively for the carriage of freight. When this is done without the knowledge and consent of the owner he is not liable for injuries which may result (Gibson v. Leonard, 143 Ill. 182; 37 Ill. App. 344; 17 L. R. A. 588; Patterson v. Hemenway, 148

Mass. 94; Snyder v. Natchez R. R. & T. R. Co., 42 La. Ann. 302; O'Brien v. Western Steel Co., 100 Mo. 182; 18 Am. St. Rep. 536. See 23 L. R. A. 155; 25 *Id.* 34). In McCarthy v. Foster (156 Mass. 511) the court reviewed the facts and concluded as follows: "The elevator with which he (plaintiff) fell was for merchandise only. He had operated it for years, and was perfectly familiar with its construction and its use. He knew that all persons were forbidden to pass up or down upon it, by notices plainly posted, and with which he was familiar. That he and others habitually disregarded them, and rode up and down in violation of them, cannot favorably affect his case against the defendant, as the latter was not in possession of the store, and had no notice that the elevator was used except for merchandise. * * * He used it at his own risk, and for an injury resulting in the act of so using it the defendant was not responsible to him." (See Wise v. Ackerman, 76 Md. 375; 25 At. Rep. 424.)

§ 67. **Riding on freight elevator instead of passenger elevator near by.** — Where both passenger and freight elevators are provided there is an express invitation to take the passenger elevator, and one injured by defects in the freight elevator while riding thereon cannot recover damages of the proprietor. Thus, in Amerine v. Porteous (Mich.), 63 N. W. Rep. 300), under facts similar to those included in the statement just made, the court said: "Plaintiff chose to ride in the elevator which to his knowledge was provided for another purpose, knowing at the same time that a passenger elevator had been provided and was in operation. The invitation extending from the defendants to take the passenger elevator was in its nature express, and the situation negatived any possible inference of an invitation to take the freight elevator."

§ 68. **Unauthorized entry for business purposes.**— Where a person went into the factory of another to find an employee of the latter

who usually attended to some business for the former, and passed into a portion of the building from which employees were excluded, where being directed by an employee, the place being dark, he proceeded and fell into an elevator hole and was injured. The court held that the factory owner was under no duty to such person to guard the elevator hole, that the direction by the employee did not create such obligation and that no recovery could be had for the injury (Flannigan v. American Glucose Co., 11 N. Y. S. Rep. 688; see Lackat v. Lutz, 94 Ky. 287; 22 S. W. Rep. 218). Again, where plaintiff's intestate, having a son in the employment of the defendants, in carrying his dinner to him, entered a passage way on the defendant's premises, where there was an unguarded elevator shaft, and falling therein, was killed. It was held, that in the absence of any express invitation to enter upon the premises, the defendant was not liable (Gibson v. Sziepienski, 37 Ill. App. 601).

§ 69. **Landlord not liable to tenant, when.**— Where an elevator was kept locked and the key left in the proper place, and a tenant improperly procures another key, unlocks the elevator and leaves it open without the knowledge or consent of the landlord, the landlord is not responsible for any consequential injuries to the tenant (Handyside *v.* Powers, 145 Mass. 123).

§ 70. **Employee of contractor, not a trespasser.**— In Ferris *v.* Aldrich (58 Hun, 610; 12 N. Y. S. Rep. 482), where an employee of a contractor for the construction of a building was injured, without fault of his own, by reason of the unsafe condition of an elevator in the building, which was used by him in his work, it was held, that he was not a trespasser and was entitled to maintain an action for his injury.

§ 71. **Minor trespassers.**— A newsboy who had been forbidden to ride in a passenger elevator cannot recover for injuries received

in attempting to board the car, unless he was willfully injured (Springer v. Byram, 137 Ind. 15; 23 L. R. A. 244).

§ 72. **Statutes no protection to trespassers.**— The provision of the Laws, N. Y., 1887, ch. 462, entitled: "An act to regulate the employment of women and children in manufacturing establishments, etc.," which, at sec. 8, requires the protection of elevator holes, was not intended to protect persons entering such premises without business or invitation and imposes upon the proprietors of manufacturing establishments no duty towards such persons (Flannigan v. American Glucose Co., 111 N. Y. S. Rep. 688).

§ 73. **Effect of prohibitory notice .**— Notices either verbal or written, direct or by placards posted in conspicuous places, may be given by the owners or operators of elevators to persons forbidding the use of such elevators. One who knowingly violates such notices becomes in effect a trespasser and assumes

the risks of injury. Where the owner or operator intends to enforce and rely upon such notices, it is his duty to see that every person ordinarily having the right to ride upon the elevator is either notified in person or has a reasonable opportunity of seeing and reading the posted notice or notices (see Hunsen v. Schneider, 58 Hun, 60; 11 N. Y. S. Rep. 347; Springer v. Byram, 137 Ind. 15; 23 L. R. A. 244, *ante*, §§ 67, 71).

In the case of Patterson v. Hemenway (148 Mass. 95, cited at § 66, *supra*), where an elevator bearing the inscription: "This elevator is for freight only, not for passengers," had been repeatedly used by a boy without invitation in doing errands to the top of the building, he having never found any one at the elevator to operate it but having been twice told by persons employed at the top of the building not to use it, and he went to it on the day of the accident, entered alone and went up closing the door at the top floor behind him, knowing that any one

below wishing to use the elevator could do so by lowering it with the rope used to operate it. In about five minutes he returned in a great hurry, opened the door, and turning quickly toward some one speaking to him and without looking at the elevator well he stepped out into it. The elevator having been in the meanwhile lowered he fell and was injured. It was held that he was guilty of such contributory negligence as to preclude him from maintaining the action.

§ 74. **Proof of case.** — To recover damages for injuries received from an elevator on another's premises the plaintiff must offer proof which will justify the jury in finding that he came upon the premises by some authority or invitation from the owner, that he was injured on account of the want of due care either in the construction or the management of the elevator and that he was himself exercising due care. If the proof offered is sufficient, if believed, to authorize the jury to find in favor of the plaintiff, the case

should be submitted to them (Gordon v. Cummings, 152 Mass. 513; 9 L. R. A. 640).

§ 75. **Practice — Statement of attorney.**— In an action for personal injuries to the plaintiff, sustained by his falling down an elevator shaft, a statement by his attorney in the opening statement of the case that he expects to prove that other accidents had happened at the same place, is not sufficient ground to reverse the judgment for the plaintiff where the court excludes the evidence offered upon this point (Marder v. Leary, 137 Ill. 319; 26 N. E. Rep. 1093).

CHAPTER V.

DAMAGES.

§ 76. **General Rule.**— For negligence in the construction or operation of an elevator which results in injury to a person free from contributory negligence, actual damages may be recovered. If the negligence was willful, punitive or exemplary damages may be had; and generally willfulness will be presumed from recklessness or gross carelessness. Special damages must be particularly alleged or they cannot be proved and recovered. Thus, in Treadwell v. Whittier (80 Cal. 579; 5 L. R. A. 498), it was held in effect, that where the plaintiff's statement sets out the particular manner in which he was injured all damages which necessarily result from the injury, such

as the impairment or loss of capacity to attend to business, may be proved and recovered under the general *ad damnum* allegation. Damages naturally, although not necessarily consequential, must be specifically alleged, or they cannot be proved.

§ 77. **Assessing damages.** — In assessing damages to an employee from the negligence of his employer, it is competent for the jury to consider the plaintiff's health and physical ability to support himself and his family before the accident, compared with his condition in such particulars, afterwards; also his physical and mental suffering, his loss of time and how far the injury was permanent in its character, and allow damages accordingly. But it is not competent for the jury to consider the "plaintiff's condition in life — that is whether he is rich or poor." (Malone v. Hawley, 46 Cal. 409.)

§ 78. **Measure of damages.** — Where a small boy's "heel was painfully mashed, the

small bone of his leg broken, the leaders strained and shortened," and his leg bruised and injured, so that it was necessarily placed in a plaster-paris bandage for some weeks, and after that in a sole-leather bandage, and finally, when out of bed, long continued walking hurt his leg, it was held that $500 damages for the injury was not excessive (Kentucky Hotel Co. v. Camp (Ky.), 30 S. W. Rep. 1010).

Where an able-bodied man was so injured as to prevent him from continuing his business, and to disable him from engaging in any active occupation, $30,000 was held not excessive (Smith v. Whittier, 95 Cal. 279).

§ 79. **Excessive damages.** — The court's duty is to determine what constitutes excessive damages and where the verdict of the jury awards excessive damages, a new trial should be granted, unless the plaintiff will consent to a remittitur reducing the amount to a reasonable sum (Mitchell v. Marker, 62 Fed. Rep. 139).

APPENDIX.

Among the statute laws enacted in the several States of the Union directly regulating the construction and operation of elevators are the following:—

CONNECTICUT.

Elevators, wells, hoistways, etc., to be kept safe.— Section 2266 of the general statutes is hereby amended to read as follows: The inspector of factories may order the opening of all hoistways, hatchways, elevator wells, and well holes, upon every floor of every factory, mercantile establishment, or other building where machinery shall be used, to be protected by good trap doors, self-closing hatches, and safety catches or other safeguards, such as will insure the safety of the employees in such factory, mercantile establishment, or other building where machinery

shall be used, and all due diligence shall be used to keep such trap doors closed at all times, except when in actual use by an occupant of the building having the use and control of the same.

All elevator cabs or cars, whether used for freight or passengers, shall be provided with some suitable mechanical device, if considered necessary, by the said inspector, whereby the cab or car will be securely held in the event of accident to the shipper-rope or hoisting machinery, or from any similar cause, and said mechanical device shall at all times be kept in good working order. Laws of Conn., Pub. Acts, 1893, ch. 118.

MASSACHUSETTS.

Rules for elevators, etc. — The openings of all hoistways, hatchways, elevators and well-holes, upon every floor of a factory or mercantile or public building, shall be protected by good and sufficient trap-doors, or self-closing hatches and safety-catches, or such

other safeguards as said inspectors (of buildings) direct; and all due diligence shall be used to keep such trap-doors closed at all times, except when in actual use by the occupant of the building having the use and control of the same; all elevator cabs or cars, whether used for freight or passengers, shall be provided with some suitable mechanical device, to be approved by said inspectors, whereby the cabs or cars will be securely held in the event of accident to the shipper-rope or hoisting machinery, or from any similar cause. Pub. St., ch. 104, sec. 14, as amended by Acts of 1882, ch. 208.

Boston may regulate elevators. — The city of Boston may by ordinance regulate the building, management and inspection of elevators, hoistways and elevator shafts, in said city. Acts of 1882, ch. 252, sec. 1.

Dangerous elevators to be placarded. — If any elevator whether used for freight or passengers shall in the judgment of the inspector

of factories and public buildings of the district in which such elevator is used, or in the city of Boston, of the inspector of buildings of said city, be unsafe or dangerous to use or has not been constructed in the manner required by law, the said inspector shall immediately placard conspicuously upon the entrance to or door of the cab or car of such elevator a notice of its dangerous condition, and prohibit the use of such elevator until made safe to the satisfaction of said inspector. Any person removing such notice or operating such elevator while such notice is placarded as aforesaid, without authority from said inspector, shall be punished by a fine of not less than ten nor more than fifty dollars for each offense. Acts. of 1883, ch. 173.

Age of custodians of elevators. — No person, firm or corporation shall employ or permit any person under fifteen years of age to have the care, custody, management or operation of any elevator, or shall employ or permit any person under eighteen years of

age to have the care, custody, management or operation of any elevator running at a rate of speed of over two hundred feet a minute. Acts. of 1890, ch. 90.

MICHIGAN.

Shafts to be inclosed, etc. — It shall be the duty of the owner, agent or lessee of any manufacturing establishment where hoisting shafts or well holes are used to cause the same to be properly and substantially inclosed or secured if in the opinion of the inspector it is necessary to protect the life or limbs of those employed in such establishments. It shall also be the duty of the owners, agent or lessee to provide or cause to be provided such proper trap or automatic doors so fastened in or at all elevator-ways as to form a substantial surface when closed and so constructed as to open and close by action of the elevator in its passage, either ascending or descending. Pub. Acts, 1893. No. 126, sec. 8.

MINNESOTA.

Elevator wells to be inclosed, etc.— All hoistways, hatchways, elevator wells and wheelholes in factories, mills, workshops, storehouses, warerooms or stores shall be securely fenced, inclosed or otherwise protected, and due diligence shall be used to keep all such means of protection closed, except when it is necessary to have the same open, that the said hatchways, elevators or hoisting apparatus may be used. All elevator cabs or cars, whether used for freight or passengers, shall be provided with some suitable mechanical device, whereby the car or cab will be securely held in the event of accident to the shipper-rope or hoisting machinery, or from any similar cause; provided, however, that elevators regularly inspected and insured against loss from personal injuries by any indemnity insurance company authorized to do business in Minnesota shall not be subject to the supervision

of the commissioner of labor or the factory inspectors of the State (Gen. Laws, 1893, ch. 7, sec. 3).

Child under certain age not to run elevator.— No person, firm or corporation shall employ or permit any child under sixteen years of age to have the care, custody, management or operation of any elevator, or permit any person under eighteen years of age to have the care, custody, management or operation of any elevator running at a speed of over two hundred feet a minute. Gen. Laws, 1895, ch. 171.

NEW YORK.

Hoisting shafts and elevators to be protected.— It shall be the duty of the owner, agent or lessee of any manufacturing establishment where hoisting shafts or well holes are used, to cause the same to be properly and substantially inclosed or secured, if in the opinion of the factory inspector or the assist-

ant factory inspector, or a deputy factory inspector, unless disapproved by the factory inspector, it is necessary to protect the life or limbs of those employed in such establishments.

It shall also be the duty of the owner, agent or lessee of each of such establishments to provide or cause to be provided such proper trap or automatic doors, so fastened in or at all elevators ways as to form a substantial surface when closed, and so constructed as to open and close by action of the elevator in its passage, either ascending or descending; but the requirements of this section shall not apply to passenger elevators that are inclosed on all sides. Laws, 1890; ch. 398, § 8.

Child under certain age not to run elevators.— No person, firm or corporation shall employ or permit any child under the age of fifteen years to have the care, custody, management of or to operate any elevator, or shall employ or permit any person under the age of eighteen years to have the care, custody, management

or operation of any elevator running at a speed of over two hundred feet a minute.— Laws, 1892, ch. 673, § 3.

PENNSYLVANIA.

Elevators and well holes. — In any hoistway, elevator or well hole, not inclosed in walls of brick or other fireproof materials, the openings through and upon each floor shall be provided with and protected by a substantial guard or gate, or with good and sufficient automatic trap doors to close the same. Outside windows or openings of every elevator shaft shall have such sign or device to indicate the existence of the said shaft as shall be approved by the bureau of fire. No passenger elevator shall be operated, unless a certificate, signed by some reputable elevator builder that the elevator is safe and in good order, has been furnished within six months and posted in the car at the entrance. 1893, June 8; P. L. 360, § 28. 1 P. & L. Dig., p. 488, § 45.

Hoistway, etc., to have automatic trap door. — In any store, or building, in the city of Philadelphia, in which there shall exist, or be placed, any hoistway, hatchway, elevator, or well hole, or in which there shall be made any opening through the floor, the same shall be properly protected, or covered, by good and sufficient trap door, or other such appliances as may be necessary to secure the same from being or becoming dangerous to life or limb, and on the completion of the business of each day, the said trap door, or other appliances, shall be safely closed by the occupant having the use and control of the same; any violation of the provision of this act shall subject the offender, or offenders, to a fine of fifty dollars, for each offense, to be recovered with cost of suit, in an action of debt, in any court having cognizance thereof, by, to and for the use of the Philadelphia association for the relief of disabled firemen. 1865, Feb. 16; P. L. 152, § 1. 1 P. & L. Dig., p. 488, § 46.

No person under fourteen to manage.— No person, firm or corporation shall employ or permit any minor under the age of fourteen years to have the care, custody, management or operation of any elevator. Any person, firm or corporation, employing any minor under the age of fourteen years to operate, manage, or otherwise have the care or custody of an elevator, shall be guilty of a misdemeanor, and upon conviction thereof shall be sentenced to pay a fine of not less than twenty-five dollars nor more than one hundred dollars. 1893, May 24; P. L. 131, § 1; 1 P. & L. Dig., p. 1186, § 225; p. 2306, § 23.

Automatic locking device.— All elevators for the carriage of passengers are required to have placed thereon or attached thereto such automatic locking device, electrical or mechanical, as will hold immovably and secure the carriage used in such elevator while any gate, door or doors at the landing that is used for entrance thereto or exit therefrom is or are

open and unsecured; the said automatic device, electrical or mechanical, to place the power of controlling the elevator beyond the control of the attendant while any gate, door or doors on the landing leading to the carriage is open and unsecured.

Any person or persons, firm or corporation who may own any building where passenger elevators are used shall be required, within one year from and after the passage of this act, to have said automatic locking device, electrical or mechanical, placed thereon or attached thereto and in perfect operation, or be subject to a penalty or fine of three dollars per day for each and every day said elevator is in use without the above named device. Said fine to be collected as other debts due the Commonwealth and paid to the county treasurer where such offense is committed. Laws, 1895, p. 129, No. 99.

WISCONSIN.

Inspector's powers as to elevators.— The State factory inspector, his assistant, or any officer of the bureau of labor and industrial statistics, shall examine elevators used for carrying freight or passengers, or both, and shall condemn those found to be defective or unsafe by written notice given to the proprietor or owner, or the agent of either, or by posting said notice on the elevator walls or cab. And if any elevator so condemned shall be continued in use without repairs, and loss of limb or life result therefrom, the owner or proprietor so keeping it in use shall be held fully responsible, civilly and criminally, for said loss of limb or life. [Sec. 1, ch. 453, 1887.] S. & B. Ann. St., p. 647.

Elevators to be fireproof.— The inside walls or casings of every elevator for the conveyance of passengers to and from the upper stories of any such building, as is described

in the preceding section of this act (hotels, theaters, tenement houses, etc.), shall be constructed of fireproof material throughout. Laws 1895, ch. 355, p. 721; amending R. S., sec. 1636d.

INDEX.

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[References are to pages.]

[References are to pages.]

[References are to pages.]

[References are to pages.]

[References are to pages.]

[References are to pages.]

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